

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF HAWAII  
3 UNITED STATES OF AMERICA, ) CRIMINAL NO. 03-00048DAE  
4 Plaintiff, ) Honolulu, Hawaii  
5 vs. ) February 10, 2006  
6 (01) DEON JOSEPH, ) 9:39 a.m.  
7 Defendant. )  
\_\_\_\_\_  
) MOTION TO WITHDRAW  
)) GUILTY PLEA

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DAVID ALAN EZRA,  
UNITED STATES DISTRICT JUDGE

10 APPEARANCES:

16 For the Defendant: MARK R. ZENGER, Esq.  
17 Richards & Zenger, a Law Corp.  
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20 Official Court Reporter: Cynthia Fazio, RMR, CRR  
21 United States District Court  
P.O. Box 50131  
Honolulu, Hawaii 96850

24 Proceedings recorded by machine shorthand, transcript produced  
25 with computer-aided transcription (CAT).

1 FRIDAY, FEBRUARY 10, 2006

9:39 A.M.

2 THE CLERK: Criminal 03-00048DAE, United States of  
3 America versus defendant one, Deon Joseph.

4 This case is being called for a hearing on a Motion to  
5 Withdraw Guilty Plea.

6 Counsel, please make your appearances for the record.

7 MS. SAMESHIMA: Yes, good morning, Your Honor.

8 Beverly Wee Sameshima on behalf of the United States, together  
9 with Special Agent Mylene Oconer of the Bureau of Immigration  
10 and Customs Enforcement.

11 THE COURT: All right.

12 MR. ZENGER: Morning, Your Honor. Mark Zenger on  
13 behalf of defendant Deon Joseph, who is also present.

14 THE COURT: Okay. You ready to proceed?

15 MR. ZENGER: Your Honor, prior to proceeding I think I  
16 need to put something on the record.

17 In my consultation with Mr. Joseph -- first of all,  
18 let me go back.

19 I submitted to the court an exhibit list with five  
20 exhibits on it, tabbed; one for the court and one for the  
21 witnesses when they get on the stand.

22 THE COURT: Uh-huh. Yes, I've got that.

23 MR. ZENGER: And we went through this, I went through  
24 this with Mr. Joseph last night in detail. Last night, though,  
25 he informed me that he feels that because we do not have the

1 correspondence between the Immigration and Customs and the DEA  
2 or whoever -- what other agencies were dealing with the other  
3 three defendants, that I will be unable to properly  
4 cross-examine the witnesses here today. I disagree with that  
5 assessment, however my -- my client has instructed me to ask to  
6 continue this hearing and to seek discovery of those documents.

7 MS. SAMESHIMA: Your Honor, there's no such documents.  
8 That's irrelevant to the issue that we're here for. I think  
9 it's a delay tactic, a transparent delay tactic.

10 THE COURT: The motion is denied.

11 MR. ZENGER: Thank you, Your Honor.

12 THE COURT: You may proceed.

13 THE DEFENDANT: (Indicating).

14 THE COURT: No, Mr. Joseph, you have a lawyer, your  
15 lawyer speaks in court.

16 THE DEFENDANT: Well --

17 THE COURT: No, Mr. Joseph, sit down.

18 THE DEFENDANT: I would like to --

19 THE COURT: Mr. Joseph, sit down. The motion has been  
20 made; the motion is denied.

21 Yes, let's proceed.

22 MR. ZENGER: Yes. Would you like the government to go  
23 first or the defense?

24 MS. SAMESHIMA: Your Honor, it's his burden, he needs  
25 to put on his evidence.

1                   THE COURT: Yes.

2                   THE DEFENDANT: (Indicating). Your Honor, I don't  
3 want Mr. Zenger as my attorney anymore, Your Honor. If -- if  
4 this court -- I would like this court to grant me another  
5 attorney; if not, I would like to go pro se.

6                   THE COURT: Okay. What is your problem with  
7 Mr. Zenger?

8                   THE DEFENDANT: We're unprepared to even go through  
9 this process. I met Mr. Zenger 7:30 last night. We had  
10 2 weeks to prepare for this -- for this hearing. I have no  
11 idea -- I have -- I have very little idea of the questions that  
12 he is going to ask the witnesses here. At least we should  
13 have -- my perspective of it, we should have at least sat down  
14 and go over the questions that we're going to ask the witnesses  
15 here today.

16                  I'm very uncomfortable just being here with  
17 Mr. Zenger. And I say that in light of the letters that I've  
18 written to the court also previously. And those letters that  
19 I've written to the court, Your Honor, I would like those  
20 letters to be sent to the disciplinary committee as soon as  
21 possible. I would like to go through that proceeding first,  
22 Your Honor, if I may.

23                  But as far as being with Mr. Zenger, I can't do that  
24 anymore.

25                  THE COURT: Sit down.

1                   Mr. Zenger?

2                   MR. ZENGER: You want me to respond to that?

3                   THE COURT: Well --

4                   MR. ZENGER: I have gone through this in excruciating  
5 detail with him. My questions are contained in a declaration  
6 that was filed long ago; he has a copy of it, he's had a copy  
7 of it. We talked about it when we were here last time. I met  
8 with him last night, we went through it again. I could spend  
9 24 hours a day 7 days a week with this gentleman and it  
10 wouldn't be enough for him. I'm prepared, I'm ready to go.

11                  THE DEFENDANT: I mean that's good but how many -- how  
12 many -- how many hours have you spent with me? It's good to  
13 say that he can spend 24 hours a day, but how many -- how many  
14 hours have you actually spent with me? How many times have I  
15 called his office trying to get in touch with him?

16                  THE COURT: Well, the harsh reality of life is that  
17 you have a court-appointed lawyer, his job is to represent you  
18 competently. So far, as I can see, he's represented you not  
19 just competently but very competently. He is not at your  
20 beckon call 24/7. He is not supposed to be sitting out there  
21 at wherever you're -- at the Federal Detention Center waiting  
22 for you.

23                  The key is whether he is prepared, he knows what the  
24 issues are, he's ready to cross-examine and examine witnesses,  
25 he has prepared a very thorough list here, very professionally

1 done, and I don't see that he could have done any more. He's  
2 not supposed to come out there and just sit with you whenever  
3 you feel like it, Mr. Joseph, so that you can have your lawyer  
4 sitting out there with you. That's just not the way it works.

5 THE DEFENDANT: Understandable, Your Honor, but that's  
6 not what I'm asking for. And -- and this goes in line with the  
7 previous letter that I -- the previous letters that I filed  
8 with the court about the other attorneys.

9 I mean it seems like this -- I mean it seems like this  
10 is a deliberate tactic of mine to delay -- like the counsel  
11 just said, to delay this -- this proceedings. This is not a  
12 tactic of mine. If it was up to me we would have had a trial  
13 as soon as they said they weren't going to do what they  
14 promised to do.

15 THE COURT: All right. Well, Mr. Joseph, what the  
16 court is going to do in this case is, because Mr. Zenger has  
17 been put in an almost untenable position by you, you've  
18 threatened to take him to the Disciplinary Counsel.

19 THE DEFENDANT: That's not a threat, Your Honor. I  
20 would like those letters to be sent to --

21 THE COURT: No, if you're going to send something to  
22 Disciplinary Counsel, you send it yourself.

23 THE DEFENDANT: Okay.

24 THE COURT: I want to let you know, however, ahead of  
25 time, that my -- your petition, at least insofar as this court

1     is able to discern, lacks absolute merit and that this court  
2     will oppose vigorously any imposition of sanctions against  
3     Mr. Zenger for attempting to represent you because he has  
4     represented you competently and professionally as far as I'm  
5     concerned.

6                 So you can go file your disciplinary proceeding  
7     against him, but I'm going to be witness number one for  
8     Mr. Zenger insofar as his professionalism in this court.

9                 Now, I want to ensure that you get a fair proceeding,  
10    Mr. Joseph. So I am going to -- and I also want to relieve  
11    Mr. Zenger of the burden of having to deal with you any  
12    further, but I'm going to direct that a new lawyer be appointed  
13    for you immediately. That lawyer is going to be your last  
14    lawyer. If you don't get along with that lawyer, you're going  
15    to proceed without one.

16                THE DEFENDANT: Can I -- is it possible, Your Honor,  
17    for me to -- everything that I've written in those letters, is  
18    it possible for me to take a polygraph, everything that I've  
19    written in those letters?

20                THE COURT: Look, Mr. Joseph, I'm not ordering any  
21    polygraphs.

22                THE DEFENDANT: Well, if -- well, if I'm lying, Your  
23    Honor -- if I'm not lying, how can -- how can those letters not  
24    be looked at seriously if I'm not lying?

25                THE COURT: Mr. Joseph, look, you asked for a new

1       lawyer. I'm granting your request. That's all you're entitled  
2       to. Probably not even entitled to that, but I'm going to give  
3       it to you. So you will get a new lawyer.

4                     THE DEFENDANT: I understand what you're saying, Your  
5       Honor, and I appreciate you giving me a new lawyer, but it  
6       seems -- it seems to me like what -- the perception I'm getting  
7       that I'm a problem to the court, that I'm lying to the court.  
8       And all I'm asking for is to take a polygraph to show that I'm  
9       not lying everything that I've written to this court.

10                  THE COURT: Well, you know, the truth of the matter is  
11       that in fairness to you I'm going to recuse myself from further  
12       proceedings in this matter because I have formed an opinion  
13       about your credibility, and I believe you lack, utterly lack  
14       credibility. And I think it would not be fair for you, given  
15       my view that you utterly lack credibility, to continue on as a  
16       judge in this case. To my knowledge this is the first time in  
17       my entire career that I've had to recuse myself for this  
18       circumstance. There may have been one other time where I've  
19       done it. But I find your attitude and your demeanor to be  
20       offensive to Mr. Zenger unnecessarily.

21                  Mr. Zenger and I are not close friends. I want you to  
22       know that. I don't think I've ever seen Mr. Zenger socially  
23       outside of the courtroom. He and I -- he doesn't call me up on  
24       a weekly basis. Mr. Zenger and I don't have lunch. We've  
25       never had lunch to my knowledge, unless we were sitting at the

1 same table at some Bar function.

2           But when I see a lawyer unjustly -- who has been  
3 working very hard with a recalcitrant defendant to try to get  
4 them a fair trial accused of essentially unprofessional conduct  
5 and malpractice, it is quite disturbing to me.

6           I think what you want is to delay these proceedings.

7 I don't think there's any merit to what you've suggested. I do  
8 not believe you. And I think that for me to continue on in  
9 this case would not be fair to you or to the principles that I  
10 believe in so strongly in this court.

11          It is incumbent upon a judge under the canons of  
12 professional responsibility applicable to judges to recuse  
13 themselves if they believe that they cannot be fair and  
14 impartial. Given your conduct so far in this case I must say I  
15 do not think that there would be an appearance of impartiality  
16 on my part. I think I could be fair to you, I think I would be  
17 fair to you because I've never been unfair to any defendant,  
18 even those that have accused me of things. But I think there  
19 would be an appearance of potential partiality because I  
20 definitely have formed an opinion as to your credibility, and I  
21 don't think you have any.

22          THE DEFENDANT: So you -- you formed an opinion upon  
23 my credibility --

24          THE COURT: Yes.

25          THE DEFENDANT: -- upon my attitude, not the contents

1 of what I have said. Because nobody --

2 THE COURT: Because I don't think that you're telling  
3 the truth --

4 THE DEFENDANT: Nobody has proved me to be a liar so  
5 far and I'm asking to take a polygraph.

6 THE COURT: Yeah, well, okay. So, I'm going to  
7 continue this matter, order that another -- recuse myself. I'm  
8 going to send the matter to the Chief Judge for reassignment  
9 and I'm going to request that the magistrate appoint a new  
10 lawyer. I'm going to relieve Mr. Zenger of his responsibility.  
11 I'm going to grant your motion to get a new lawyer. So  
12 Mr. Zenger will be out of the case.

13 THE DEFENDANT: One more thing, Your Honor. Can I ask  
14 the court for a full and complete discovery of my case?

15 THE COURT: No.

16 THE DEFENDANT: Of everything in my case?

17 THE COURT: No. I'm not going to do anything further  
18 in this case with you. You ask the new judge, whoever that may  
19 be, for whatever relief you think that judge needs to give you.  
20 All right?

21 MS. SAMESHIMA: Your Honor, my concern is, and I know  
22 the court understands this, this is now the -- will be the  
23 fifth lawyer in this case. And as the court can see from  
24 letters that the court's received from this defendant, he's  
25 complained about every single lawyer that he's had.

1                   THE COURT: Yes, I understand. Mr. Joseph is --

2                   MS. SAMESHIMA: This is the end of the line. I don't  
3 want this case to go on for another year, Your Honor. I've  
4 been living with this case for --

5                   THE COURT: Ms. Sameshima, you and I are in the same  
6 frame of mind about Mr. Joseph. That's why I'm having to  
7 recuse myself because I think Mr. Joseph lacks credibility. I  
8 think he's been stalling and delaying. I find him to --

9                   MS. SAMESHIMA: Well, Your Honor, the government's  
10 case is being prejudiced. I've got all three prior attorneys  
11 here today. I had to subpoena them here today. I have  
12 Ms. Hassell here today. Mr. Joseph knew that coming in.

13                  THE COURT: I know.

14                  MS. SAMESHIMA: We were ready to give him his day in  
15 court.

16                  THE COURT: Okay. Mr. Joseph, the court, quite  
17 frankly, has heard enough from you. So I'm going to order that  
18 you sit down.

19                  THE DEFENDANT: Okay, Your Honor.

20                  MS. SAMESHIMA: And I know -- I can understand the  
21 court's position and I respect it, but I have to state the  
22 government's position. We've been through this delay and I  
23 think delays are going to prejudice our case.

24                  THE COURT: I -- I understand that, but these lawyers  
25 understand that they have a job to do and they're officers of

1 the court and they will be back because they -- they recognize  
2 that these things happen. But we're living in the Ninth  
3 Circuit and, quite frankly, the Ninth Circuit bends over  
4 backwards to cater to, occasionally, these kinds of issues, you  
5 know. I mean I'm not saying -- I'm not saying every judge does  
6 because most of the judges in the Ninth Circuit are wonderful,  
7 but there are a few who think, I guess, that if a defendant  
8 requests a new lawyer they should get one, regardless of how  
9 many lawyers they've been through.

10 You know, I mean just -- I'm just judging from the  
11 opinion -- that's my personal opinion, has nothing to do with  
12 my role as a judge. And if this comes up on a panel and it  
13 ends up two or three years down the road and a Ninth Circuit  
14 panel composed of maybe one or more of these judges who believe  
15 that I should have granted him a new lawyer and not recused  
16 myself from the case and -- or denied him the request, then  
17 your case would really be prejudiced because by that time  
18 memories would have faded dramatically. And Mr. Joseph would  
19 come back and he would get a whole new whack at it and you'd be  
20 in a situation where it would be very difficult for you to  
21 recapture your witnesses. That would be worse.

22 In this instance, at least, this will be taken care of  
23 expeditiously. I can assure you it will be taken care of  
24 expeditiously because I do not want this thing dragging on any  
25 further. And Mr. Joseph is, unfortunately, attempting to

1 manipulate the system, and he's done a pretty good job of it so  
2 far. And if nothing else, you know, you got to give him credit  
3 for that I guess. Good manipulator.

4 But the bottom -- the bottom line is that I cannot  
5 stay in this case given the fact that there is an appearance of  
6 impartiality -- lack of partiality -- lack of impartiality on  
7 my part and partiality on my part because I have indicated and  
8 I do feel that Mr. Joseph has no credibility. Now, how can I  
9 preside over his motion under those circumstances? I can't.

10 Not fairly.

11 MS. SAMESHIMA: Your Honor, that's -- I take your  
12 representation that you'll get this on the right track and I'll  
13 look forward to -- to finishing this case.

14 THE COURT: Chief Judge Gillmor will be back in town,  
15 I understand, on Monday. She's been out of town. But I will  
16 refer the matter to her. I will ask her to move expeditiously  
17 in reassigning this matter.

18 In the meantime we're going to get a new magistrate  
19 judge to -- we're going to get a magistrate judge to appoint  
20 him a new lawyer today. That will be done today. And -- what,  
21 Mr. Joseph?

22 THE DEFENDANT: You keep saying I have no credibility  
23 now --

24 THE COURT: You don't have any credibility.

25 THE DEFENDANT: I keep asking for a polygraph.

1                   THE COURT: Mr. --

2                   THE DEFENDANT: And that's another thing. You keep  
3 saying that I'm prolonging the case. I've waited for attorneys  
4 to come see me for 30 days at a time.

5                   THE COURT: Mr. Joseph, you know what, it doesn't make  
6 any difference what I say because what I say isn't going to be  
7 of any consequence to you one way or the other. I'm not the  
8 one that's going to judge this. You're going to be judged by a  
9 different judge and you're going to get -- a panel of the Ninth  
10 Circuit will review whatever that judge does. It isn't going  
11 to be me. So don't worry about it.

12                  THE DEFENDANT: I just -- with all due respect, Your  
13 Honor, you know, I have -- I came into -- it seems like I have  
14 no respect for the process, but -- and no respect --

15                  THE COURT: Mr. Joseph, you've been through five  
16 lawyers. Do you know how many defendants have been through  
17 five lawyers that I know of? Complaining about each and every  
18 one? It seems like as far as you're concerned, Mr. Joseph, the  
19 only one who is right here is you and everybody else in the  
20 world is wrong.

21                  THE DEFENDANT: What if I'm telling the truth, Your  
22 Honor?

23                  THE COURT: Yeah, okay.

24                  THE DEFENDANT: Does that account for anything?

25                  THE COURT: All right. Take him out.

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**COURT REPORTER'S CERTIFICATE**

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I, CYNTHIA FAZIO, Official Court Reporter, United States District Court, District of Hawaii, Honolulu, Hawaii, do hereby certify that the foregoing pages numbered 1 through 15 is a correct transcript of the proceedings had in connection with the above-entitled matter.

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DATED at Honolulu, Hawaii, March 10, 2006.

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10

11 /s/ Cynthia Fazio  
CYNTHIA FAZIO, RMR, CRR

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